IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 06.02.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.1704 of 2002

The Union of India rep.
by the Union Territory
of Pondicherry,
rep. by the Deputy Commissioner,
(Excise), Pondicherry. ... Appellant/Respondent

vs.

N.Muguntharaman ... Respondent/Petitioner

Appeal against the order of the learned single Judge, dated 03.08.2001, made in W.P. No.13498 of 2001. Presented to this Court under Article 226 of the Constitution of India to grant an order of injunction restraining the respondent from enforcing the surities covered by the documents 1. Document No. 440/87, dated 19.02.1987, comprised in R.S. NO. 148/11, in Oulavarakarai commune, belonging to Gnanasoundari D/o Pandurangan and 2. Document belonging to one Subramanian, son of Varadharajan, residing at Orilan Pet, Pondicherry deposit as Security for the Arrack Shop NO. 7-B in the year 1987.

For Appellant : Mr.K.K.Sasidharan,
Additional Govt. Pleader (Pondicherry)

For Respondent : Mr.D.Bharath Chakravarthy

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

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Deputy Commissioner (Excise), Union Territory of Pondicherry, aggrieved by the order of the learned single Judge, dated 03.08.2001, made in W.P. No.13498 of 2001, has filed the above Writ Appeal.

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2. The respondent herein - writ petitioner was the successful bidder in respect of Arrack Shop No.7B, Kannikoil in Pondicherry, for the lease year 1987-88. The bid amount was Rs.33,400/-. According to the petitioner, as per Rules, he paid three months kist as security deposit amounting to Rs.1,00,200/-. In addition to the same, he also deposited title deeds as immovable property security. He committed default in payment due to various reasons including some lapses on the part of the Department. In order to get back the documents/title deeds, he approached this Court for necessary direction. Based on the direction of this Court, he cleared the entire arrears of Rs.33,770/- in instalments. However, the Department demanded Rs.1,17,465/- towards interest. On verification, it was found that interest had been wrongly calculated at the rate of 12%. According to the writ petitioner, there is no justification for demanding interest at 12% in view of the fact that, as per the agreement, interest is payable only at the rate of 6 1/4% per annum. In those circumstances, he prayed for a direction to the Deputy Commissioner (Excise), Pondicherry, to return all the documents viz., title deeds furnished by him, without insisting payment of Rs.49,569/-.

3. Learned single Judge, by order dated 03.08.2001, following the order passed by him in an earlier writ petition, permitted the writ petitioner - respondent to pay interest at the rate of 6 1/4% in two instalments within a period of three months and also directed that, on such deposit, the Department shall release the documents furnished by the writ petitioner. Aggrieved by the said Order, the Deputy Commissioner (Excise), Pondicherry, has filed the above Appeal.

4. Heard Mr.K.K.Sasidharan, learned Additional Government Pleader (Pondicherry) and Mr.D.Bharath Chakravarthy, learned counsel for the respondent.

5. The only issue involved in this Appeal is with regard to the rate of interest payable by the respondent herein - former lessee of an arrack shop.

6. In terms of Rule 143 of the Pondicherry Excise Rules, Arrack Shop No.7B, Kannikoil, Pondicherry, was taken on lease by the respondent relating to excise year 1987-88 and the period of lease was from 01.07.1987 to 30.06.1988. Monthly kist amount payable by the lessee is Rs.33,400/-. As per Rules and terms and conditions, monthly kist shall be paid on or before 25th of succeeding month. As per Rule 201 of the Rules, the lessee is liable to pay interest at the rate of 6 1/4% on kist arrears. It is not in dispute that the lease period expired on 30.06.1988. It is also not in dispute that the entire kist was not paid. It is

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the case of the Excise Department that the statutory interest rate was revised by 12% from 01.07.1989. In other words, according to the Department, all kist arrears attracts statutory interest at 12% with effect from 01.07.1989. To put it clear, upto 30.06.1989, interest was charged at 6 1/4% and from 01.07.1989 onwards, interest was levied at 12%. Learned single Judge, following his earlier order, dated 14.02.2001, in W.P. No.8517 of 1995, held that the Department is entitled only for the agreed rate of interest viz., 6 1/4%, and that the subsequent Rule enhancing the rate of interest at 12% is not applicable to the petitioner; hence, the Department is not justified in claiming enhanced rate of interest.

7. It is not in dispute that the respondent executed an agreement with the Excise Department, agreeing to pay the monthly kist in terms of the Rules. He also agreed to pay interest for the kist arrears at 6 1/4%, viz., the rate fixed in terms of the Rules. As rightly pointed out, upto 30.06.1989, the Department is entitled to claim interest only at the rate of 6 1/4% in respect of kist arrears. However, after 01.07.1989, as per amended Rule-201, the Department is entitled to claim interest at the rate of 12%. It is not in dispute that till 01.07.1989, the respondent did not pay the arrears; in such circumstance, as per the amended Rule, from 01.07.1989 onwards, the Excise Department is entitled to claim interest at 12%, which is in accordance with sub-rule (1) of Rule-201. It is relevant to note that, as per Rule 156, the respondent herein had executed an agreement of lease in Form L.A. with the Government incorporating the terms and conditions under which the right of retail vend of liquors was leased in his favour. Among the various terms, Clause-5 is relevant, which reads as under:-

> " 5. The lessee agrees with the Government to abide by the clauses and conditions stipulated in the Gazette Notification hereto annexed and also agrees for the recovery of excise rental arrears with interest as per Pondicherry Excise Rules, 1970 and under the provisions of Pondicherry Revenue Recovery Act, 1970 in case of his default. "

Thus, it is clear that the respondent/lessee agreed to pay rental arrears with interest as per Pondicherry Excise Rules, 1970 as well as Pondicherry Revenue Recovery Act, 1970 in case of his default, in view of the specific clause (clause-5) of the L.A. Agreement. After 01.07.1989, in respect of the kist arrears, the lessee is liable to pay interest at the rate of 12% as per the Rules. In such circumstances, the view taken by the learned single Judge is against the Pondicherry Excise Act and Pondicherry Excise

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Rules and also contrary to the undertaking given by the respondent by way of execution of lease deed in terms of Rule 156 of the Rules in the statutory format which binds him in the sense that he himself undertook to abide by the Pondicherry Excise Rules. Accordingly, the contrary conclusion arrived by the learned Judge cannot be sustained.

8. It is useful to refer to the Judgment of the Supreme Court reported in (2001) 9 SCC 497 (Excise Supdt., Warangal District vs. Deluxe Bar). Excise Superintendent, Warangal, Andhra Pradesh and others were the appellants before the Supreme Court and the respondents were holders of wholesale licence, retail licence, bar licence, storage licence for godowns as well as distributor's licence. Those licences had been issued to the respondents under the Andhra Pradesh Excise Act, 1968. During the currency of the block of 5 years for which the licence was valid, the State Government issued G.O. Ms. No.160, dated 03.03.1990, amending the Schedule to the Andhra Pradesh (Foreign and Indian Liquor) Rules, 1970, whereby licence fee in respect of wholesale licence for the sale of all kinds of Indian Liquor including those which were not consumed on the premises, bar licences, storage licences, club licences and retail licences were enhanced. The enhancement was directed to come into force with effect from 01.04.1990. An excise year was defined under the Act as a year commencing from 1st October and ending 30th September. The enhancement was not made retrospectively commencing with the current excise year. However, on demand being raised for enhanced licence fee for the period 01.04.1990 to 30.09.1990, G.O. Ms. No.160, dated 03.03.1990, was put in issue by the respondents through several writ petitions. A Division Bench of the High Court upheld the contention of the respondents that the State Government could not collect increased licence fee during the middle of the Excise Year as also the contention that the enhancement was arbitrary. The Division Bench, however, rejecting the contention of the State held that the enhanced licence fee which was made effective from 01.04.1990 could only apply from the beginning of the next Excise Year ie., 01.10.1990 irrespective of the fact that it was still within the block of 5 years. It was argued on behalf of the State that the licensees had bound themselves to pay the licence fee and other fees or any enhanced licence fee and therefore, the licensees could not challenge the enhanced licence fee levied from to time during the validity of their licence. The Supreme Court upheld the finding of the High Court to the effect that enhancement of the licence fee by G.O. Ms. No.160, dated 03.03.1990, becomes effective only from 01.10.1990 and that enhanced licence fee can be collected from the respondents with effect from 01.10.1990 notwithstanding the fact that the block of 5 years for which they had obtained licence had

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not yet expired. It is clear from the decision of the Supreme Court that the State is entitled to collect the enhanced rate from 01.10.1990 even though the same was still within the block of five years. Coming to the the case on hand, we have already pointed out that, in view of the fact that the respondent had not cleared the arrears, from 01.07.1989, he is liable to pay interest at the rate of 12% in terms of Rule 201. The said relevant aspect has not been considered by the learned Judge.

9. It is urged on the side of the respondent that inasmuch as the Department has not filed Appeal against similar earlier order passed by this Court, they cannot maintain the present Appeal.

10. In the decision reported in (1995) 4 SCC 683 (State of Maharashtra vs. Digambar), the Hon'ble Supreme Court, while considering similar objection, concluded as follows:-

> " 16. ..... Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar mattes by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter/s where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest.
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> 17. In any event, in our considered view, the non-filing of appeal before this Court by the State in similar matters or rejection of SLPs by this Court in limine or otherwise in similar matters, by themselves cannot operate as a bar or a fetter for this Court in entertaining SLPs subsequently filed even if they are considered to relate to similar matters where it finds, as in this case, that the High Court was wholly wrong in granting relief of compensation to a writ petitioner by the judgment under appeal by not considering his entitlement for such relief under Article 226 of the Constitution on account of laches or undue delay on his part or where such wrong judgment is followed for granting similar relief by rendering 191 judgments, which are the subject of SLPs in this Court and where there is every possibility of the High Court granting similar

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relief at the instance of persons who may go before it with similar complaints, which ultimately may result in the estimated loss of Rs.400 crores to the State, as stated on behalf of the State, and cause grave injustice to the interests of the State. hence, non-filing of appeals before this Court against certain judgments of the High Court or rejection of appeals filed before this Court against certain judgments of the High Court, cannot be held to come in the way of exercise of this Court's wide discretionary power, with which it is especially invested under Article 136 of the Constitution of entertaining an appeal or appeals against a similar judgment or judgments at the instance of an aggrieved party including the State when it is found necessary to remedy manifest injustice."

In view of the decision of the Supreme Court, merely because the Department has not challenged the earlier order of this Court, it cannot at all be said that they cannot maintain the present Appeal, more particularly in view of amended Rule-201 which came into effect from 01.07.1989. This aspect was also not taken note of by the learned single Judge.

11. In the light of what is stated above, the order of the learned single Judge, dated 03.08.2001, made in W.P. No.13498 of 2001, is set aside. It is brought to our notice that the respondent herein has already paid the entire arrears including interest at the rate of 6 1/4% during the pendency of the appeal. Considering this special circumstance and taking note of the fact that the lease relates to excise year 1987-88, there is no need on the part of the respondent to pay the enhanced interest as claimed by the Department. We make it clear that the indulgence shown to the respondent is confined to his case alone because of the special circumstances involved. Writ Appeal is allowed with the above observation. No costs.
JI.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Deputy Commissioner
(Excise) Union of India,
Union Territory of Pondicherry
Pondicherry.

+ one cc to Mr. Sai, Bharath and Ilan, Advocate sr no. 7300
+ one cc to Senior Government Pleader sr no. 7152

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nm(19.02.07)

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